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Conference

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 IN RE: TERRORIST ATTACKS ON  
4 SEPTEMBER 11, 2001

03 MDL 1570 (GBD) (FM)

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5  
6 New York, N.Y.  
7 February 19, 2014  
11:25 a.m.

8 Before:

9 HON. FRANK MAAS,

10 U.S. Magistrate Judge

11 APPEARANCES

12 KREINDLER & KREINDLER  
13 Attorneys for Ashton Plaintiffs  
BY: ANDREW J. MALONEY

14 MOTLEY RICE  
15 Attorneys for Burnett Plaintiffs  
BY: ROBERT T. HAEFELE

16 ANDERSON KILL & OLICK  
17 Attorneys for O'Neil Plaintiffs  
and Plaintiff's Executive Committee  
18 BY: JERRY S. GOLDMAN  
NICHOLAS MAXWELL

19 COZEN O'CONNOR  
20 Attorneys for Federal Insurance Plaintiff  
BY: SEAN P. CARTER  
21 SCOTT TARBUTTON  
22  
23  
24  
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## APPEARANCES (Continued)

BERNABEI &amp; WACHTEL

Attorneys for Defendant AHIF

BY: ALAN R. KABAT (via telephone)

CLIFFORD CHANCE

Attorneys for Defendant Dubai Islamic Bank

BY: RONI E. BERGOFFEN

OMAR MOHAMMEDI

Attorney for Defendants WAMY and WAMY International  
and

GOETZ &amp; ECKLAND

Attorneys for Defendants WAMY and WAMY International

BY: FREDERICK GOETZ

LEWIS BAACH

Attorneys for Defendants IIRO MWL

BY: ERIC LEWIS

WALEED NASSAR

AISHA HENRY (via telephone)

SALERNO &amp; ROTHSTEIN

Attorneys for Defendant Yassin Abdullah Kadi

BY: AMY ROTHSTEIN

PETER SALERNO

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1 (In open court)

2 (Case called)

3 MR. KABAT: Good morning, your Honor. Frederick Alan  
4 Kabat of the law firm of Bernabei & Wachtel. I represent  
5 (unintelligible).

6 THE COURT: Good morning.

7 MS. HENRY: Good morning, your Honor, this is Aisha  
8 Henry, with Lewis Baach, representing Muslim World League and  
9 International Islamic Relief Organization.

10 THE COURT: As of about 20 minutes ago, you have been  
11 admitted pro hac vice.

12 MS. HENRY: Thank you, your Honor.

13 I think that is it on the phone.

14 THE COURT: So we gathered.

15 MR. CARTER: Good morning, your Honor. Sean Carter  
16 Cozen & O'Connor on behalf of the plaintiffs.

17 MR. TARBUTTON: Good morning, your Honor. Scott  
18 Tarbutton of Cozen & O'Connor.

19 MR. HAEFELE: Good morning, your Honor. Robert  
20 Haefele, Motley Rice, also for the plaintiffs.

21 MR. GOLDMAN: Good morning, your Honor. Jerry  
22 Goldman, Anderson Kill for the plaintiffs.

23 MR. MALONEY: Good morning, your Honor. Andrew  
24 Maloney Kreindler & Kreindler for the Ashton plaintiffs.

25 THE COURT:

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1 MS. BERGOFFEN: Good morning, your Honor. Roni  
2 Bergoffen with Clifford chance on behalf of the Dubai Islamic  
3 Bank.

4 MS. ROTHSTEIN: Good morning, your Honor. Amy  
5 Rothstein, Salerno & Rothstein, for Yassin Abdullah Kadi.

6 THE COURT: Good morning.

7 MR. SALERNO: Good morning, your Honor. Peter Salerno  
8 of Salerno & Rothstein for Yassin Abdullah Kadi.

9 THE COURT: All right.

10 MR. LEWIS: Good morning, your Honor. Eric Lewis of  
11 Lewis Baach, for Muslim World League and International Islamic  
12 Relief Organization.

13 MR. MOHAMMEDI: Good morning, your Honor. Omar  
14 Mohammedi on behalf of WAMY and WAMY International.

15 MR. GOETZ: Also, your Honor, Frederick Goetz for  
16 WAMY.

17 THE COURT: I know we have the motion related to WAMY.  
18 I have it here.

19 Whatever counsel want to deal with first? Schedule or  
20 the application relating to WAMY?

21 MR. CARTER: Your Honor, we don't have a preference.

22 THE COURT: OK. Why don't we talk about schedule  
23 first.

24 MR. CARTER: Sure, your Honor. We had an opportunity  
25 to confer with some of the defense counsel over the course of

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1 the last week. In particular, we spoke with Mr. Lewis on  
2 behalf of Muslim World League and IRO. We traded some e-mails  
3 with Ms. Rothstein about defendant al-Kadi's productions, and  
4 we understand that those defendants are still in the process of  
5 collecting documents and are supportive of the view that we  
6 should set a uniform June 30 deadline for productions for all  
7 parties.

8 We are in agreement with that. As we have expressed  
9 before, we think there are significant concerns about  
10 staggering this, not only because we think documents will be  
11 forthcoming that relate to other defendants and would be  
12 relevant, but also because of the degree to which staggered  
13 schedules might distract sort of our attention in six different  
14 directions simultaneously. So we are of the view that the June  
15 30 deadline should apply uniformly to all parties.

16 THE COURT: But as to the personal jurisdiction  
17 defendants, presumably it would just be that which relates to  
18 that topic.

19 MR. CARTER: It would be just the jurisdictional  
20 discovery we probably have disputes about, the scope of that  
21 discovery. We had a meet and confer this week as well with  
22 counsel for Della Avco. I think there is likely to be an  
23 application on that front as well.

24 Coincidentally, your Honor, a June 30 deadline would  
25 roughly coincide with the date on which the Supreme Court will

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1 hold a conference determining whether it takes the pending  
2 cert. petition relating to the defendants whose dismissals were  
3 affirmed by the Second Circuit and when the Supreme Court is  
4 also likely to decide the petition that we understand the  
5 Kingdom will be filing sometime in the next month. So we will  
6 have some sense of where the broader litigation is headed at  
7 that point as well.

8 THE COURT: Let me hear from whoever opposes that  
9 date.

10 MS. BERGOFFEN: Your Honor, I don't think there is any  
11 opposition at this point.

12 THE COURT: That makes it easy for me. June 30 it is,  
13 a uniform date.

14 So that obviates the discussion about the number of  
15 pages of documents to be produced. Does that leave anything  
16 other than the WAMY application for us to discuss.

17 MR. CARTER: Your Honor, plaintiffs had requested that  
18 your Honor extend the December 26 order so that it would be  
19 mutual and apply to all parties.

20 THE COURT: Insofar as FOIA?

21 MR. CARTER: Insofar as FOIA, as well as this issue as  
22 to whether and how the parties should go about certifying  
23 whether they have withheld documents based on objections  
24 asserted in their discovery responses. We are prepared to  
25 submit a certification to that fact to WAMY, and actually

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1 anticipated doing it before the hearing, but the defendants  
2 then expressed in their response that there were issues they  
3 wanted to discuss on that point with the Court so we thought it  
4 best to wait until we understood what the playing field was.

5 MR. MOHAMMEDI: Your Honor, I think the issue with  
6 WAMY has nothing to do with certification. When we appeared  
7 last time on the motion to compel we believed that we made the  
8 argument that there was not certification. We just asked them  
9 if they have documents, or not specific requests.

10 THE COURT: Well, that's the certification that they  
11 were being subjected to in paragraph 2 of the December 26  
12 order, which says, Plaintiffs shall update their written  
13 responses to WAMY's document requests by stating whether any  
14 responsive documents have been withheld on the basis of their  
15 objections to the requests, that is what you were referring to.

16 MR. CARTER: That's what we were referring to, your  
17 Honor. We think if we are going to have this requirement  
18 relative to WAMY, it should be a universal requirement for all  
19 parties as to all of the responses that have been provided.

20 THE COURT: Is there any objection to that?

21 MR. MOHAMMEDI: We do believe there was a motion to  
22 compel to related to specific requests. It was not a general  
23 certification that WAMY applied for the motion to compel. I  
24 think the other issue is the certification saying that we don't  
25 have any documents, that is general. We are just relating some

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1 of the requests that we made.

2 THE COURT: I think, Mr. Carter, you have broadened  
3 the request. I thought the concern was FOIA productions rather  
4 than every response to every request, which at this late stage  
5 I assume is pretty voluminous.

6 MR. CARTER: Right, your Honor. I think our request  
7 in the letter applied to both. They are distinct issues. With  
8 regard to the FOIA, we have some concern that defendants have  
9 adopted an interpretation of your Honor's prior FOIA decisions  
10 as in some way alleviating them of the burden to produce  
11 FOIA-related correspondence to agencies in their possession.  
12 To that point, your Honor, we received a FedEx from the  
13 Treasury Department on February 18 which included several  
14 pieces of correspondence between the Treasury Department and  
15 Clifford Chance on behalf of Dubai Islamic Bank relative to the  
16 FOIA requests that we submitted to Treasury pertaining to DIB.

17 Those letters generally offer objections to Treasury's  
18 proposed disclosure of documents to us. The materials we have  
19 seen refer to a whole broader set of correspondence between  
20 counsel for DIB and the Treasury Department going back to 2012,  
21 which has elongated the process of us getting responses from  
22 Treasury apparently by perhaps two years.

23 THE COURT: Say that again.

24 MR. CARTER: So, the Treasury had indicated its  
25 intention to produce documents to us as early as 2012, and



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1 there has then since that time been and extended back and forth  
2 between counsel for Dubai Islamic Bank and the Treasury  
3 Department about what materials should be disclosed.

4 In most cases it appears that Treasury has overruled  
5 DIB's objections and is preparing to make production of the  
6 materials. But the back and forth has extended for a lengthy  
7 period of time. More fundamentally, we just never received  
8 these documents from Dubai Islamic Bank in discovery, and they  
9 are clearly FOIA related correspondence.

10 MS. BERGOFFEN: Your Honor, if I may?

11 THE COURT: Yes.

12 MS. BERGOFFEN: With regard to the documents  
13 Mr. Carter is speaking of, these documents are wholly  
14 irrelevant and not covered within the scope of Rule 26 in this  
15 case.

16 If I might step back and give you a little bit more  
17 detail on that, your prior rulings addressed whether or not  
18 documents and correspondence with FOIA can be produced under an  
19 attorney-client privilege or work product protection. The  
20 Dubai Islamic Bank has not withheld any of the documents on the  
21 basis of either of these privilege arguments.

22 Rather, these documents are well outside the scope of  
23 Rule 26 for two reasons:

24 First of all, they deal with transactions that have  
25 absolutely nothing whatsoever to do with al-Qaeda 9/11 or any

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1 other issue in this case.

2 More importantly, these transactions that were at  
3 issue that the correspondence with the OFAC office dealt with  
4 were from a time period between 2006 and 2011, I believe, which  
5 is five to ten years after the attacks of 9/11.

6 Your Honor, to the extent that there was any  
7 correspondence between DIB and OFAC that were responsive to a  
8 request related to 9/11, we would agree that your order would  
9 encompass those, and we have not identified any such documents.

10 I am happy to go back and look again just to confirm.  
11 To the extent that any such documents existed, we would, of  
12 course, produce them. The documents that Mr. Carter apparently  
13 already has made clear that the documents -- that  
14 correspondence with OFAC that he is seeking pertains only to  
15 documents that are well outside the scope of Rule 26.

16 THE COURT: Well, my view, and I thought I said it in  
17 December although it didn't find its way to the order, was that  
18 the ruling was reciprocal, and I expected everybody to produce  
19 responsive FOIA material with no claims of privilege or work  
20 product.

21 Obviously, if documents are not within the scope of  
22 the request, they need not be produced. And if they are  
23 outside the time period, again they should be produced. If I  
24 didn't make it clear last time I will make it clear today and  
25 in a follow-up order that my rulings with respect to FOIA apply

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1 reciprocally to both sides, and that with respect to FOIA each  
2 side should confirm or each party should confirm for its  
3 adversaries that it has not withheld any FOIA documents.

4 There were so many requests floating around that I  
5 think to just say generically everybody must respond request by  
6 request as to whether any documents have been withheld on the  
7 basis of objections is not a ruling I am prepared to make  
8 requiring that.

9 MR. CARTER: Your Honor?

10 THE COURT: In specific instances, if need be, I am  
11 glad to address that.

12 MR. CARTER: Your Honor, one issue with regard to the  
13 relevancy objections that counsel for DIB just made. The  
14 defendants came forward and advocated to the Court that all of  
15 plaintiffs' FOIA-related correspondence with the agencies were  
16 relevant to the discovery process and that production should be  
17 compelled. We had held back some of those on the basis of an  
18 assertion of privilege. In the context of advocating our  
19 position on that point we noted that the correspondence at  
20 issue bore essentially no relevance to the case and that really  
21 it was only the meat of the substantive productions by the  
22 agencies that mattered.

23 The defendants countered that and said they were  
24 entitled to the correspondence. If they are entitled to our  
25 FOIA requests and our correspondence with the agencies, it is

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1 our view that any correspondence they have submitted to the  
2 agencies pertaining to our requests are by definition also  
3 relevant. They have sort of interjected the relevance of these  
4 materials into the case themselves, but then when it comes to  
5 their correspondence they are pulling back from that position.

6 MS. BERGOFFEN: Respectfully, your Honor, I would  
7 disagree. There is a large distinction with regard to  
8 plaintiffs' correspondence. They have placed them on a  
9 privilege log, which makes it an admission by plaintiff that  
10 those particular documents were relevant.

11 By contrast, your Honor, under the FOIA, plaintiffs  
12 are not bound by Rule 26. They are allowed to ask the  
13 government for anything they want, whether it has to do with  
14 this case or not.

15 To the extent we need to respond, within our rights  
16 and under any exemptions within the FOIA, to requests that are  
17 outside of Rule 26, that simply has nothing to do with this  
18 case. I don't know why plaintiff sought documents from OFAC or  
19 any other agency that clearly are well beyond the scope of this  
20 case, but that is something they chose to do.

21 But respectfully, the fact that plaintiffs chose to  
22 seek documents well outside the scope of discovery requirements  
23 under Rule 26 does not broaden the obligation of my clients to  
24 simply produce things outside of the scope.

25 THE COURT: I am going to adhere to my ruling. In any

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1 event, we are sort of at the periphery of what is potentially  
2 relevant. FOIA is an available option, as counsel said, where  
3 relevance any type of rulings that Judge Daniels or I have made  
4 are not a concern. So I am not going to expand my ruling.

5 MR. CARTER: Thank you, your Honor.

6 MS. BERGOFFEN: Thank you, your Honor.

7 MR. GOETZ: Your Honor, may I get clarification on  
8 your ruling as to paragraph 2 of your December 26 order. I am  
9 glad Mr. Carter brought it up. We did reach out to plaintiffs  
10 on February 7 asking that we have this very dialogue that we  
11 are having in court. Unfortunately, we didn't get any response  
12 to that.

13 But, to be clear, what WAMY was asking for when we  
14 brought the motion, there are about a dozen requests for  
15 production to which we basically got no response. There were a  
16 bunch of objections not telling us one way or another whether  
17 they had documents or not. That's why we brought the motion.  
18 That is the relief that I understood the Court gave us.

19 So the clarification I am seeking is that I would ask  
20 the Court to continue the order as I understood it, which is to  
21 those requests for production of documents that the plaintiffs  
22 have not indicated one way or another whether or not they have  
23 responsive documents they just follow the Court's order and  
24 indicate whether any responsive documents have been withheld on  
25 the basis of their objections.

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1 THE COURT: I haven't modified that in any way, and I  
2 think Mr. Carter understands that that's the ruling, although  
3 he wanted to wait for this conference before responding.

4 MR. CARTER: Yes. It's been clarified for us, your  
5 Honor. It's very helpful. Thank you.

6 MR. GOETZ: It seemed like we heard --

7 THE COURT: When can counsel get a response.

8 MR. CARTER: I can't imagine it would be a problem to  
9 do that within the next week.

10 MR. GOETZ: That would be great.

11 THE COURT: Anything else before we get to the  
12 application related to WAMY? OK.

13  
14 MR. CARTER: Thank you, your Honor.

15 The application as to WAMY sort of has two components  
16 to it. The first is documents generally relating to the WAMY  
17 Canada branch office of WAMY in Canada that was investigated by  
18 the Canadian government and had its license revoked.

19 The other issue relates to FOIA matters which have  
20 largely I think been dispensed by virtue of the dialogue today,  
21 but I will probably will touch upon them.

22 From the plaintiffs' perspective your Honor, with  
23 regard to the WAMY Canada documents, we have expressed  
24 considerable frustration that we are here today seeking court  
25 intervention relative to an issue that was resolved more than

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1 two years ago following a very lengthy meet-and-confer process  
2 between plaintiffs' counsel and counsel for WAMY.

3 The letter application doesn't go into that much  
4 detail on this issue, but we initially raised our concerns  
5 about WAMY's objection to production of documents in the  
6 physical possession of its branch offices way back in May of  
7 2011 when we had a lengthy meet and confer by telephone.

8 After that we followed up with an e-mail explaining  
9 our legal theory for asserting that WAMY did, in fact, have  
10 possession, custody, or control of documents in the physical  
11 custody of its branch offices.

12 From that time forward there were nearly 10 pieces of  
13 correspondence exchanged back and forth. We, the plaintiffs,  
14 undertook independent investigative efforts to aggregate  
15 information from the public domain that supported our factual  
16 view that WAMY did, in fact, supervise its offices very closely  
17 and had custody and control over the documents.

18 All of that ultimately led to an agreement that was  
19 formalized in a letter to the Court explaining that WAMY was  
20 withdrawing that objection and acknowledging that it did, in  
21 fact, have custody and control over the documents in all of its  
22 branch offices.

23 Given that agreement, we don't really feel that we  
24 should be subject to the burden of being here today to  
25 relitigate that issue with regard to the Canadian branch. We

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1 feel simply that WAMY should be ordered to adhere to the  
2 agreement and its representation to the Court and make  
3 production of the documents through whatever means are  
4 necessary to achieve that result.

5 THE COURT: There are two layers, if you will, to  
6 this, one of which is documents related to WAMY Canada that are  
7 in the possession of the parent WAMY Saudi Arabia. And then  
8 there's the nettlesome issue of documents that WAMY Canada may  
9 have that have not yet been shared with WAMY.

10 MR. CARTER: That is correct, your Honor.

11 Based on what we see in the limited production that we  
12 have from WAMY Saudi Arabia and WAMY International, the U.S.  
13 branch of WAMY, there was a relatively fulsome relationship  
14 between the headquarters, the U.S. branch, and the Canadian  
15 branch over a period of many years.

16 While we have some documents including payments of  
17 WAMY Canada's budget, we don't have nearly the spectrum of  
18 information that we would expect to have from the headquarters  
19 pertaining to the Canadian branch and don't feel that that  
20 search has been undertaken.

21 WAMY in its current opposition expresses the view that  
22 those documents may not exist because WAMY Canada was long  
23 sorts of this rogue branch that didn't really cooperate. But  
24 that representation doesn't really square, your Honor, with,  
25 first of all, the payment of its budget on a regular basis



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1 during relevant periods, the precise periods that are relevant  
2 to this litigation, sort of cordial correspondence that we saw  
3 back and forth. It doesn't square with WAMY's representation  
4 affirmatively that it had possession over those documents  
5 during the course of this litigation.

6 So at the end of the day we think relatively clearly  
7 that there is just simply not the production of the stuff in  
8 the headquarters branch pertaining to WAMY Canada. We are  
9 particularly concerned about it, your Honor, because the  
10 documents in question sort of go to the heart of the case here.

11 You are dealing with WAMY's relationship with  
12 designated terrorist entities, including Benevolence  
13 International.

14 You are also dealing with the circumstance in which  
15 WAMY's director secretary-general in Saudi Arabia filed an  
16 affidavit in these court proceedings denying the existence of  
17 any such relationship. So now we see a pattern in which the  
18 CRA investigation brings to light the existence of this  
19 relationship, shared joint bank accounts --

20 THE COURT: Shared offices I gather also.

21 MR. CARTER: Shared offices, shared leadership.

22 Obviously it seems that the documents in the possession of the  
23 headquarter organization would shed some light on the  
24 headquarter's knowledge of those relationships and whether or  
25 not the affidavit was completely accurate.

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1           With regard to the branch, your Honor, all we would  
2 say is there was a lengthy period of time during this  
3 litigation during which discovery was ongoing. WAMY had an  
4 obligation to secure responsive documents. It had an  
5 opportunity to obtain the responsive documents from WAMY Canada  
6 for a lengthy period. Even between the time that we reached  
7 the agreement on WAMY's withdrawal of the objection to its  
8 custody and control over the documents in the branch office,  
9 you have at least five months before WAMY Canada allegedly goes  
10 rogue and stops cooperating. So these documents already should  
11 have been secured and provided to the plaintiffs before any of  
12 this came to pass.

13           But in the end, it's sort of all too convenient that  
14 the Canadian office has suddenly become intransigent and  
15 unwilling to cooperate. From the plaintiffs' perspective it  
16 seems clear that WAMY would have relief if that were in fact  
17 occurring.

18           The Canadian branch is trading on WAMY's name. It  
19 continues to use WAMY's name for its business. WAMY could  
20 clearly step in, in Canadian court proceedings if necessary, to  
21 bring that rogue chapter back under control and obtain its  
22 documents as necessary to fulfill its obligations in this legal  
23 proceeding.

24           THE COURT: Insofar as WAMY Saudi Arabia didn't take  
25 steps prior to the Canadian branch going rogue to secure the

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1 documents, isn't that a little like Al-Haramain USA, which I  
2 said there was no showing that it could have been anticipated  
3 that the Saudi government basically would lock them out of the  
4 documents.

5 MR. CARTER: It is a little bit different, your Honor,  
6 because the Saudi government is taking a regulatory step, which  
7 is far different from a relationship where you have the legal  
8 capacity to step in and --

9 THE COURT: Yes. I am not talking about the capacity  
10 to unwind it or trying to ameliorate it. I'm really talking  
11 about it in terms of it potentially not being something that  
12 could have been anticipated or should have been anticipated.

13 MR. CARTER: It is hard to say, your Honor, because on  
14 the one hand WAMY says that there is a history of a lack of  
15 cooperation with this office. If that is in fact the case,  
16 then clearly it should have been taking more robust steps to  
17 deal with that particular office as a problem child.

18 On the other hand, it says that this became a sudden  
19 problem after the CRA investigation. So there is sort of a  
20 conflict in WAMY's own arguments that makes it difficult. If  
21 you do buy their view that it was always a problem child and  
22 failed to provide reporting as required, there clearly was some  
23 reason to anticipate that it was a problem and more robust  
24 steps should have been taken.

25 THE COURT: Thank you.

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1 MR. MOHAMMEDI: Can I go to the podium, your Honor?

2 THE COURT: Yes, sure.

3 MR. MOHAMMEDI: Thank you. I think that I would like  
4 to mention about WAMY and WAMY Canada, we are not denying that  
5 there was cooperation between WAMY and WAMY Canada. I do not  
6 want the plaintiff to paint that as if there was a rogue  
7 relationship from the beginning. There was a relationship. It  
8 was a good relationship.

9 THE COURT: But during that time wasn't WAMY Canada  
10 providing all sorts of material to the parent? I know  
11 technically you explained it may not be a parent/subsidiary  
12 relationship, but wasn't WAMY Canada, in exchange for funding  
13 providing reams of information?

14 MR. MOHAMMEDI: Right.

15 Your Honor, I think if the plaintiffs review the  
16 documents we have produced to date, the way they are speaking  
17 is as we have not produced any documents. As a matter of fact,  
18 they conceded many of the arguments they made were provided  
19 from those documents. Those documents specifically describe  
20 the relationship between WAMY and WAMY Canada. WAMY Canada --  
21 WAMY was actually not even involved directly with WAMY.

22 THE COURT: I'm sorry. I didn't hear.

23 MR. MOHAMMEDI: It was not directly involved with  
24 WAMY. It was WAMY USA that was dealing with WAMY Canada. It  
25 was almost like a subchapter of WAMY USA.

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1           At that point WAMY was not dealing with them directly  
2 except for a few projects that WAMY was undertaking in Canada  
3 and asking WAMY to make sure that the source of the people were  
4 asking for funds are legitimate and they would send it to  
5 Canada.

6           However, at that time, 2004 I believe, that's when  
7 WAMY USA was not active anymore. And we produced a lot of  
8 documents --

9           THE COURT: Hang on one second.

10          Let me ask counsel who are on the phone to put their  
11 microphones on mute because I think we are hearing some sounds  
12 emanating from your end.

13          Go on.

14          MR. MOHAMMEDI: So plaintiff should have the documents  
15 showing the budget we are talking about. Actually, the budget  
16 was not going to WAMY Canada directly. It was going to WAMY  
17 USA and saying to WAMY USA, share some of the budget with WAMY  
18 Canada, which was very minimal. It was like \$20,000 a year.  
19 That's what they were doing.

20          So WAMY was relying on WAMY USA for everything that  
21 was done. At some point where WAMY USA was not active. As a  
22 matter of fact, the CRA report states specifically that WAMY  
23 Canada was not operating well before 2005, at that time. But  
24 WAMY Saudi Arabia had documents relating to WAMY Canada in  
25 their offices, which were produced. It showed a lot of

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1 communication. Actually, it showed many things. I give you,  
2 your Honor, a list of those documents that show what we had  
3 here: Balance sheet between 1999 and 2001, there was  
4 loss/profit, there was transfer of funds plaintiffs are  
5 referring to, audit statements, CRA tax returns, there was a  
6 list of donors, WAMY internal financial statements, internal  
7 general ledger, and bank statements.

8 All of these were produced to plaintiffs and they have  
9 them. They have them in Arabic, but they do have them. So to  
10 say that WAMY did not have any documents and did not try to  
11 inquire about WAMY Canada. It was inquiring. Actually, there  
12 was a relationship where they said we need some of the reports  
13 of what you are doing in Canada. That was through WAMY USA.

14 As a matter of fact, WAMY USA stopped sending funds,  
15 which were very minimal, \$6,000 in six months, because they  
16 were not receiving funds from Khatib.

17 THE COURT: They were not receiving?

18 MR. MOHAMMEDI: I mean, we are not receiving reports  
19 from Khatib. So that is they were doing. So that's when the  
20 relationship stopped.

21 They have those documents. Al-Jirad came on board and  
22 he was complying, and they have all the documents showing what  
23 they have been doing, WAMY Canada. They were sending the funds  
24 based on what they were receiving. So to say that WAMY did not  
25 have any funds or they did not try to check if WAMY Canada was

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1 doing anything wrong or they were doing something right, they  
2 had that, and that is what we produced to them.

3 The question that became clear to us, it was WAMY  
4 after the CRA report when -- and we do believe most of the  
5 documents were produced. Most of them are within the CRA  
6 possession, which we got an authorization for plaintiff to  
7 receive and see what we are talking about.

8 I don't even know what plaintiffs are trying to do  
9 here. We produced documents. We got the authorization from  
10 the CRA. We did everything we could to get that.

11 As far as the documents relating to, that were in the  
12 possession of CRA, we were able to go to Saudi Arabia and find  
13 out what's happened. The information we got is that as a  
14 matter of fact it was one of the directors of WAMY Canada who  
15 provided all documents to CRA. That's what they did. And from  
16 there they didn't have any documents.

17 So for some reason, I don't know what he did, but it  
18 seems he gave me many duplicates of what they provided. And we  
19 produced those. We went in June or July of 2012, in August we  
20 produced all those documents and they have them.

21 THE COURT: Are you saying -- I thought I may have  
22 heard you say it, but I want to be clear on whether you did or  
23 didn't say it. That WAMY Canada turned over all its documents  
24 to CRA?

25 MR. MOHAMMEDI: It seems like that is what they did,

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1 yes.

2 THE COURT: Such that it no longer has original  
3 documents?

4 MR. MOHAMMEDI: Yeah. We don't have any -- from our  
5 knowledge, we don't even know if they have them. The record  
6 shows that we have been trying so hard with the lawyers. The  
7 lawyers are taking the position that WAMY Canada is a separate  
8 organization. They don't have the obligation to give us those  
9 documents.

10 The lawyers might have those documents, and we are  
11 trying to get those documents from the lawyers. We are really  
12 trying to get those documents from the lawyers. As we speak  
13 now, as we speak, we have been contacting the lawyers.

14 Mr. Carter mentioned that we have not taken any  
15 action. First of all, we cannot take action except for the  
16 name. But not to get the documents that they have for using  
17 WAMY name, and that is what we are working on now.

18 There are many, many things going on behind the  
19 scenes. We cannot come to this Court and say what we are doing  
20 between us and our clients in trying to fix whatever was done  
21 as far as the documents are concerned. But I think the  
22 majority is being fixed by having the CRA sending all those  
23 documents, that they have the authorization, we get the  
24 authorization now, it's done, and they can send them to us.

25 The relationship when you start -- it just shows it



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1 was not a direct relationship between WAMY and WAMY Canada. As  
2 a matter of fact, there were communications where WAMY Canada  
3 would contact WAMY Saudi Arabia for funds and we want to deal  
4 directly with them and tell them no you need to go through WAMY  
5 USA, and they have those documents.

6 THE COURT: But WAMY USA is within the control of WAMY  
7 Saudi Arabia, correct? Why do they need to go to WAMY USA  
8 independently. I presume WAMY USA is a nonparty.

9 MR. CARTER: No, they are a defendant as well, your  
10 Honor, to whom we have served discovery requests. So I am not  
11 really sure that this conversation about whether WAMY Canada  
12 was under the direction of WAMY International or WAMY Saudi  
13 Arabia matters at all.

14 MR. MOHAMMEDI: It does matter, your Honor.

15 THE COURT: Who represents WAMY USA?

16 MR. MOHAMMEDI: We do.

17 THE COURT: OK. So it seems like we are exalting form  
18 over substance. If there were documents that relate to the  
19 funding of WAMY Canada, for example, that were requested by the  
20 plaintiffs and they reside with WAMY USA as the direct overseer  
21 of WAMY Canada rather than with WAMY Saudi Arabia, it seems to  
22 me those should have been produced a long time ago.

23 MR. MOHAMMEDI: But they have been produced, your  
24 Honor.

25 THE COURT: OK.

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1 MR. MOHAMMEDI: They have been produced. We produced  
2 everything we have relating to WAMY USA to plaintiffs a long  
3 time ago. That included WAMY Canada documents.

4 Your Honor, I would like to address some of the issues  
5 that were in the reply motion we didn't have a chance to  
6 address.

7 THE COURT: OK.

8 MR. MOHAMMEDI: One of them, I can address it briefly,  
9 conveniently the plaintiffs they use the Khatib example when he  
10 was dismissed because from the documents that they have  
11 Al-Khatib apparently happened to represent many organizations,  
12 and WAMY was not happy with it at that time. So they were  
13 wishing him luck, and wishing him luck to cooperate with the  
14 Al-Jirad. That was through WAMY USA. I think that was, they  
15 said there was a good relationship. There was a good  
16 relationship, but Al-Khatib was not doing a great job, and  
17 that's why he was not executive director afterwards. So that's  
18 one issue. There is a fact that is very clear.

19 THE COURT: Sorry?

20 MR. MOHAMMEDI: There is a fact that is very clear  
21 now. It is that WAMY Canada is being hostile to WAMY. We  
22 cannot deny that. We presented documents showing that. Our  
23 communication with the lawyers that we tried to hire to  
24 actually to challenge the CRA report, plaintiffs claimed there  
25 were drafts. Yes, there were drafts but we could not find them

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1 because WAMY did not have standing to find them because the  
2 WAMY Canada officers did not want to sign the retainer to file  
3 those documents.

4 So we tried everything we could. At the end -- as a  
5 matter of fact, it was not because of just lately that we  
6 worked with trying to get the authorization, as the plaintiff  
7 claims to get these things. We have been working diligently  
8 for over a year or two years trying to get that. And finally  
9 we got it. It was not as easy the way the plaintiffs claims.  
10 It was not easy. Obviously the evidence that we show explains  
11 exactly the hostile --

12 THE COURT: You are talking about Dr. Taher's  
13 authorization?

14 MR. MOHAMMEDI: Yes. Dealing with his lawyer, and  
15 then we hired the lawyer, and the lawyer specifically stated to  
16 us they are not willing to share, to sign the retainer to  
17 challenge the CRA report because they are not willing to give  
18 you even the documents that are within the CRA report.

19 That was not a fabricated fact, which as officers of  
20 the Court we find it very offensive that plaintiffs think we  
21 fabricated facts. Those are not fabricated facts. Those are  
22 due diligence by defense attorneys trying to get those  
23 documents.

24 They also make a statement about Dr. Wohaibi, and I am  
25 going to leave my cocounsel to address that.

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1           They also made the statement about the CRA report  
2           showing that WAMY Canada is not a separate organization, was  
3           not a separate organization by making the statement about  
4           Dr. Wohaibi going on newspapers and saying that. You know  
5           what, it is a newspaper article. But what we do have. We have  
6           according to the CRA report January 2011, Amen advised CRA WAMY  
7           might change its name and operation. That was via  
8           teleconference. It is in the CRA report. Also a letter to  
9           WAMY Canada from the CRA report in August 23, 2011 -- and WAMY  
10          was never aware of -- stating that we have an audit for you.

11          Afterwards there was notification of an intention to  
12          revoke. WAMY was never aware of the revocation, which occurred  
13          on February 11, 2012. WAMY was also never aware of until it  
14          became public. There was no meeting whatsoever between WAMY  
15          officials on the CRA report.

16          Plaintiff, they want us to say there was. We just say  
17          there was not documents showing anything. There was nothing.

18          THE COURT: So that, to be clear, WAMY Saudi Arabia or  
19          WAMY US had no inkling that there was a CRA investigation until  
20          the report came out?

21          MR. MOHAMMEDI: Yes, your Honor. They had no  
22          knowledge whatsoever. Obviously plaintiffs are claiming and  
23          saying that there are documents. They are forcing -- they are  
24          harassing us to get documents we don't have and documents that  
25          do not exist. In the meantime they are not even telling us if

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1 documents they have exist or do not exist.

2 There was no communication whatsoever as far as the  
3 CRA report until we know, our office knew about it and we  
4 communicated with our clients, and that's what we have tried to  
5 do with the lawyers in Canada.

6 We did undertake a good-faith effort. Plaintiffs are  
7 claiming we did not. I think the record shows what we have  
8 done so far, as far as going even to Saudi Arabia and trying to  
9 meet with the former directors of WAMY Canada, which we believe  
10 they were helpful. They gave us documents. They explained to  
11 us what happened, they gave us the documents, and we produced  
12 that to plaintiffs.

13 We just want to let this Court know that we don't have  
14 custody and control of WAMY Canada documents if they do exist.  
15 If they don't -- they might not even exist documents except  
16 for what is produced and what the CRA has, but we do not have  
17 the practical means of getting those documents.

18 They also claim --

19 THE COURT: Before you go on, there were statements  
20 made to this Court by WAMY, I guess WAMY Saudi Arabia, saying  
21 that you had control of the documents at all of the branches.

22 And yet, as Mr. Carter said, the current position is  
23 that WAMY Canada was a bit of a rogue organization even  
24 sometime ago.

25 How do you square those two? You have an admission by

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1 WAMY Saudi Arabia that it has control over the branches,  
2 including presumably or maybe just specifically the Canadian  
3 branch, and then suddenly that statement turns out not to be  
4 correct?

5 MR. MOHAMMEDI: Your Honor, I can explain that. First  
6 of all, you know, they also mentioned that we did not want to  
7 admit we had custody and control.

8 WAMY has 66 chapters around the world. Some of them  
9 they were able to work with them, some of them they don't work  
10 with them very well. They don't know what is going on, but  
11 they try to get as much information from them and ask them  
12 please give us the report if we give you the money. If you  
13 don't give us the report we don't give you the money. Simple.

14 But we did not expect this hostile -- WAMY did not  
15 expect this hostile approach by WAMY Canada. There was some  
16 difficulties with WAMY Canada, yes, and this has nothing do  
17 with the CRA report as far as that is concerned, because they  
18 were not able to get the information they needed through WAMY  
19 USA.

20 But they did not expect that WAMY Canada would say, we  
21 are a separate organization. We are not giving you any  
22 information to this. Even though they knew that it might be a  
23 separate organization, they thought it would be helpful to WAMY  
24 to get this case done and to get all the documents. They did  
25 not expect that WAMY Canada would say, no, we are not going to

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1 do this.

2 So in good faith actually WAMY said, OK, that is fine.  
3 We will try to see whatever documents we have, if there are any  
4 more, we will retrieve them, and it just happened we could not  
5 retrieve anything.

6 We went through WAMY USA, which we got that, to WAMY  
7 Saudi Arabia, and then the CRA report came, and we said was  
8 there any documents that is not, you know, that we don't have,  
9 that we need to get for the CRA report. And that's where WAMY  
10 Canada said we are not going to produce the documents. We are  
11 a separate organization.

12 THE COURT: OK.

13 MR. MOHAMMEDI: WAMY acted in good faith trying to get  
14 those documents.

15 THE COURT: Thanks.

16 MR. MOHAMMEDI: The other thing that I would like to  
17 mention is WAMY, they mentioned that they should get those  
18 documents from Morian (phonetic) Bank. Simple: We don't have  
19 standing to get those statements from the bank, foreign  
20 jurisdiction where WAMY has no standing. We cannot even file a  
21 challenge to the CRA report, let alone get a statement on  
22 behalf of WAMY Canada.

23 THE COURT: They are separate, as I understand it,  
24 corporations, not in a formal parent/subsidiary relationship of  
25 that sort, correct?

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1 MR. MOHAMMEDI: Yes, your Honor. And we have actually  
2 the legal opinion for the counsel from WAMY stating that WAMY  
3 Canada is established as a separate organization, and we just  
4 need to cooperate and work with them. We have that. We  
5 translated that document, and it is in as an exhibit.

6 I know that the FOIA request is a moot issue, but  
7 really would I like to address some of the, we do believe  
8 misrepresentations made by plaintiffs here.

9 They said that in June 2013 we produced documents.  
10 However, first they claim that we withheld documents, and we  
11 showed them we did not. Afterward they came back and they said  
12 we delayed the production of documents.

13 In June 2013, we produced documents related to FOIA.  
14 They were a little bit over 300, I believe, 18 documents. So  
15 at that time we have not started making FOIA-to-FOIA requests.  
16 We started making the requests at the end of June. Then in  
17 January and February we produced FOIA documents, and we  
18 produced them according to your order, your Honor. They were  
19 327 pages.

20 They are saying that we delayed. We didn't delay. We  
21 reproduced a few documents that came later on. We reproduced  
22 them.

23 As far as FOIA-to-FOIA requests, as you may know,  
24 agencies, governmental agencies they take a long time to give  
25 you documents. That is not our delay. It has been six months,



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1 and we have been trying in good faith to gather all those  
2 documents to produce them. Damned you do, damned you don't do.

3 THE COURT: One thing your letter says is WAMY has  
4 committed to reproducing all -- that's where it is  
5 underscored -- updated documents received in response to not  
6 only FOIA, but FOIA-to-FOIA requests as well. Such documents  
7 have and will be produced according to my order.

8 MR. MOHAMMEDI: Yes.

9 THE COURT: It seems like all of this is taking a long  
10 time. To the extent that you are saying if new documents are  
11 generated you will produce those, I understand that. But it  
12 sounds like the letter is also saying that there are  
13 pre-existing documents which have yet to be produced.

14 MR. MOHAMMEDI: No, your Honor. Everything we  
15 produced in June -- we had we produced. We didn't have any  
16 document that we did not produce.

17 It was after June, your order, that is when we  
18 produced afterwards, we produced in January and February  
19 FOIA-to-FOIA requests. There were mostly FOIA-to-FOIA  
20 requests.

21 I would like to just mention it. It seems like it's  
22 not fair for plaintiff to blame WAMY for delaying the  
23 production of FOIA requests where they start communicating with  
24 the agency in 2003. If we were delayed in six months, then  
25 they were delayed 11 years to produce those documents, until

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1 yesterday. We produced them before their production, and  
2 that's after due diligence, putting them according to your  
3 order, and we did produce them. So I don't even know what the  
4 issue here is for them to just raise this issue with the delay  
5 and WAMY producing the FOIA requests.

6 There is one last point I would like to mention with  
7 respect to FOIA, and I think it was not addressed here. I  
8 think we might need to come back to this Court to address the  
9 issue with the plaintiffs' production.

10 In one of the FOIA-to-FOIA productions when we  
11 produced to plaintiffs as a matter of fact there were 3,160  
12 pictures relating to 9/11. These were not produced to us.

13 THE COURT: These were?

14 MR. MOHAMMEDI: They were not produced to defendants.

15 We have a letter from the Department of Commerce  
16 stating that they communicated with Motley Rice, and they  
17 produced 3,160 pages.

18 Where are those pictures? They claim that there were  
19 minor issues in trying to review those documents to produce  
20 them. There was 3,160 pictures.

21 MR. HAEFELE: Your Honor, I could address that pretty  
22 quickly. First off, I haven't seen the request of  
23 Mr. Mohammedi is talking about. But I suspect, your Honor,  
24 that may have been a FOIA request from Motley Rice related to  
25 9/11 aviation litigation before Judge Hellerstein and not for

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1 the 9/11 plaintiffs.

2 You, your Honor, have already said when we had  
3 information related to other plaintiffs in other litigation, it  
4 wasn't necessarily relevant to this litigation. I am not sure,  
5 I haven't looked at it, but I suspect that may be the  
6 explanation.

7 I can tell you those photographs he is talking about  
8 never came up in our search for the FOIA responses relating to  
9 this. They weren't buried and not produced because of that.  
10 They just may not have come up.

11 THE COURT: Why don't you just go back and make sure  
12 they are not responsive to requests here from any of the  
13 defendants.

14 MR. HAEFELE: Sure.

15 MR. CARTER: Your Honor, if I may run through a few  
16 issues in response.

17 THE COURT: Yes.

18 MR. CARTER: Mr. Mohammedi indicated that when they  
19 made their initial FOIA production in June of 2013, it included  
20 all FOIA related documents WAMY had in its possession at that  
21 time. Following the filing of this motion to compel, WAMY made  
22 a FOIA production on January 31 or so, and that included at  
23 least 25 documents predating June of 2013 that had not been  
24 previously produced.

25 They include letters to the Treasury Department,

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1 Department of Justice, FBI, IRS, Department of Justice and  
2 again Treasury between September 13, 2011 and April 19, 2013.  
3 So this is a relatively significant grouping of FOIA related  
4 correspondence which would have been within the scope of your  
5 Honor's order.

6 THE COURT: Let me interrupt you for a second and just  
7 say that insofar as FOIA was produced, by way of example on  
8 CDs, and because I have already ruled there was no privilege or  
9 other protection that pertains those documents, it seems to me  
10 that they ought to be produced in the form in which they were  
11 received as Rule 34(b)(2)(E) requires, and that that will  
12 alleviate some of the problems that you are describing to me  
13 now. If that hasn't been done, that should be done.

14 MR. CARTER: We are in agreement with that, your  
15 Honor. I think the point we were trying to make is that for  
16 some reason there was a group of documents that preexisted the  
17 order, that were subject to the June 24, 2013 deadline that  
18 were not produced until we brought this motion.

19 The concern is that there have been other searches  
20 that may not have been as comprehensive as they should have  
21 been. This relates again to the issue of the WAMY Canada  
22 documents. We have had experiences in this litigation in which  
23 some of the foreign defendants have not necessarily fully  
24 understood the scope of the searches they are required to  
25 undertake, have represented to the Court that they searched and

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1 found and produced everything, and only later acknowledged that  
2 there was a broad spectrum of documents that hadn't been turned  
3 over.

4 From what we understand about the reporting  
5 obligations, we believe that there should be additional  
6 documents relating to WAMY Canada in the Saudi headquarters as  
7 well as in the U.S. headquarters. Mr. Mohammedi mentioned that  
8 he produced bank statements. We have ten pages of bank  
9 statements.

10 THE COURT: Come June, everybody presumably will have  
11 to certify that they have produced all the responsive documents  
12 or list them on a privileged log.

13 If thereafter there is an indication that documents  
14 that should have been produced have not been produced, somebody  
15 will have a fair amount of explaining to do presumably.

16 MR. CARTER: That is correct, your Honor. That's why  
17 I think we felt compelled to bring this to the Court's  
18 attention now, so we are not left to bring it up in the first  
19 instance at the close of the production deadline and so that  
20 it's clear to WAMY that it has an obligation to comprehensively  
21 search for these documents.

22 Just with regard to a few of the other issues,  
23 Mr. Mohammedi mentioned that there is now an authorization in  
24 place from the Canadian branch. The difficulty here is that  
25 WAMY's answer to the problem of one of its own branches going

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1 rogue is to say that the plaintiff should go out of their way  
2 to find alternative means to get these documents.

3 It is our view that WAMY should go out of its way to  
4 get these documents from its suddenly rogue organization, and  
5 they now have the authorization.

6 It shouldn't be incumbent upon us in every instance to  
7 go and take extra steps because they have an employee who  
8 doesn't feel like turning them over. It would be no different  
9 than someone taking them out and setting them on fire in a  
10 parking lot. That would be spoliation. So it's not clear why  
11 we should have to go to these lengths.

12 In any event, your Honor, it is important from our  
13 perspective that agreements reached after lengthy meet and  
14 confers are adhered to and people can't simply change the rules  
15 of the game for whatever reason after the fact. Again, this  
16 was a really critical issue from our perspective with regard to  
17 WAMY that we worked a long period of time to overcome.

18 THE COURT: WAMY takes the position that this is not a  
19 contrivance, but this is something that unexpectedly occurred.  
20 I understand that you have concerns, you and your colleagues,  
21 in that regard.

22 But one thing I could do, since Mr. Mohammedi just  
23 said several times in letters and in court that WAMY wants  
24 these documents as much as you do, and since I guess it may  
25 involve retaining Canadian counsel to further that goal, maybe

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1 the two sides should be splitting the cost of getting the CRA  
2 documents.

3 MR. CARTER: Your Honor, we have already undertaken to  
4 do the letters rogatory and taken all those steps. Again, this  
5 is a problem of their sort of creation.

6 THE COURT: If you take at face value what  
7 Mr. Mohammedi said, that his clients report to him such that  
8 there was no arrangement whereby at the stage when matters and  
9 facts came to light WAMY Canada decided it would no longer  
10 cooperate, then I am not sure you can lay it at the doorstep of  
11 either WAMY Saudi Arabia or WAMY USA.

12 MR. CARTER: That certainly would be taking their  
13 version of the circumstances at complete face value, your  
14 Honor. The timing is a little suspect insofar as we had a meet  
15 and confer with Mr. Mohammedi on March 8, 2012 during which we  
16 specifically discussed WAMY Canada, and a specific  
17 representation was made at that time that they were working  
18 with them on that date to get the documents.

19 Now that's five months or so after the agreement was  
20 in place pursuant to which WAMY withdrew its objection about  
21 obtaining documents from the branch offices. It was only two  
22 weeks later, when we indicated that we were aware of the CRA  
23 report, that suddenly Canada became intransigent, your Honor.  
24 The other difficulty is this whole period of time before that  
25 in which WAMY had an opportunity to collect these documents

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1 under it would just be relieved of its burden entirely for  
2 having failed to secure them during that time.

3 THE COURT: But that I think falls within what I said  
4 in an earlier decision about Al-Haramain in terms of not being  
5 able to anticipate that things would go sour.

6 MR. CARTER: As we discussed earlier, your Honor, the  
7 difference from our perspective is that Al-Haramain can't do  
8 anything to go to the Saudi government and force the Saudi  
9 government to turn the documents back over. WAMY has remedies  
10 available to it that simply didn't exist in the context of the  
11 Al-Haramain dispute.

12 THE COURT: One of which is attempting to cause WAMY  
13 Canada not to be able to use the WAMY name, but I thought I  
14 heard Mr. Mohammedi say they are taking steps to try to do  
15 that.

16 Did I hear that correctly, Mr. Mohammedi?

17 MR. MOHAMMEDI: Yes, your Honor.

18 MR. CARTER: In the context of taking those steps, it  
19 doesn't seem that it would be difficult for WAMY to also file  
20 some sort of miscellaneous action to seek to compel production  
21 of the documents so that it could protect its interests in this  
22 litigation.

23 THE COURT: I will take that under advisement.

24 MR. MOHAMMEDI: Your Honor, if I can just address, we  
25 have been in communication with Canadian lawyers. We will be



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1 producing a legal opinion from the Canadian lawyers on this  
2 issue specifically where the Canadian lawyer said even if WAMY  
3 cannot use the WAMY name, it can sue for the name, but it  
4 cannot compel them to produce documents that related to WAMY  
5 Canada.

6 We had like various communications with many counsel.  
7 As a matter of fact, to show how WAMY Canada has been very  
8 hostile, every lawyer that we contacted in Canada, they say, We  
9 have a confidence. What is this confidence? They tell us we  
10 have been contacted by WAMY Canada to fight this.

11 We are trying -- actually, we have communications as  
12 we speak now after we filed this response motion showing  
13 exactly what we have done so far. We have had communications  
14 with the different attorneys, and there is one attorney we are  
15 going to have a conversation with next week or so.

16 Like I said, we want those documents as much as  
17 plaintiff wants those documents. Because, like your Honor  
18 said, it was an embarrassment that we want to deal with. We  
19 want to find out what is happened there.

20 Also, I would like to address the issue with the CRA  
21 report. They keep claiming, plaintiffs keep claiming that CRA  
22 did not even claim that they say, the plaintiffs said WAMY  
23 deliberately financed terrorist organizations that were based  
24 in Canada. That's not what CRA said. CRA revoked the  
25 charitable status of WAMY Canada for the not reporting

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1 properly. And related to the issues of WAMY were actually all  
2 those claims that they had them in the CRA report were recycled  
3 from blogs, from the plaintiffs' claims, and they put them in  
4 there without any basis. That's what we are trying to get to  
5 the bottom of. But we don't have standing for challenging that  
6 because WAMY could not file the appeal on that report.

7 MR. GOETZ: Your Honor, may I just add one thing that  
8 strikes me, your Honor, is what practically the plaintiffs  
9 would have WAMY do here. The solution I think the Court seems  
10 to be thinking about is to have WAMY retain Canadian counsel to  
11 pursue some sort of action.

12 Now, I think we have to define our targets here. You  
13 have WAMY Canada, which may or may not have any documents, we  
14 don't know. Then we have WAMY or we have the Canadian Revenue  
15 Agency. The Canadian Revenue Agency should be more  
16 straightforward.

17 We have the authorization. It is a government agency.  
18 Whatever they have I think we can get. We will join plaintiffs  
19 in cooperating with that. But my concern is that the  
20 plaintiffs are basically trying to set WAMY up for an  
21 impossible task to come back to seek sanctions.

22 If we cannot get those WAMY Canada documents because  
23 they are not going to turn them over, and that's a fact that  
24 hasn't changed, despite our representations, when we had that  
25 meet and confer, we were laying things out as we understood

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1 things at that time and we had a plan. The plan is to reach  
2 out to WAMY Canada, and that's what we said, just like any  
3 other of the branches.

4 But when the boots hit the ground so to speak and we  
5 were trying to get the WAMY Canada documents, that's when they  
6 became recalcitrant and intransigent.

7 A couple other points, your Honor. I think the  
8 concern is that when the Court crafts an order for any kind of  
9 relief, do not set WAMY up for an impossible task, because we  
10 cannot get those WAMY Canada documents, and we don't know what  
11 the outcome of any litigation is going to be.

12 We are happy to engage counsel and pursue whatever  
13 remedies might be available. If they are as easy as plaintiffs  
14 think they might be, well, then it should be no problem. But  
15 we cannot guarantee any outcome.

16 The other point, your Honor, just because a record is  
17 being made here, the plaintiffs in their briefs say that -- and  
18 I think they deliberately mislead the Court about WAMY,  
19 deliberately misleading the Court about the relationship  
20 between WAMY and BIF to the extent that Secretary-General  
21 Wohaibi's credibility has been called into question, I just  
22 want to state clearly -- this is footnote 6 of their reply  
23 brief as well -- that from our perspective the facts are  
24 crystal clear, that there is not and has never been any  
25 relationship between WAMY and BIF.

E2jntera

Conference

1           The other also, I think, deliberate misleading of the  
2 Court by plaintiffs is in footnote 4 of the reply brief. We  
3 have given plaintiffs documents that show there have been  
4 problems between WAMY and WAMY Canada. The problems have been  
5 one of basically they don't have their act together, not that  
6 they have been outwardly hostile. That's the fact that has  
7 changed. Even the CRA report, your Honor, in its findings  
8 notes multiple deficiencies of WAMY Canada maintaining books  
9 and records in 2001 and 2002.

10           THE COURT: Thank you.

11           We do not have a date for a further conference.  
12 Should we hold one? I am many not clear whether Judge Daniels  
13 has scheduled another conference.

14           MR. CARTER: There is a conference before Judge  
15 Daniels in April, your Honor. Off the top of my head I can't  
16 remember.

17           MS. BERGOFFEN: It's the 24th.

18           THE COURT: Let me see whether that is on my calendar.  
19 Yes, it is.

20           MS. BERGOFFEN: I think from the defense side, your  
21 Honor, we believe that we can schedule a placeholder conference  
22 on the same date as the Judge Daniels conference for now.

23           MR. CARTER: I think, your Honor, we are likely to  
24 have some other motions teed up well before that time. But, if  
25 your Honor would prefer to just do it all on one date in April.

E2jntera

Conference

1 THE COURT: Why don't we do that. He's holding his  
2 conference at 11. I will set aside time immediately after  
3 that. Perhaps, depending on how long you go with him, maybe it  
4 will be after lunch. But we will do it the same day.

5 MR. CARTER: Thank you, your Honor.

6 THE COURT: OK. Thank you.

7 (Adjourned)